



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Master Sergeant Joseph A. Macrina, USAF (Retired) -  
Survivor Benefit Plan - Refund of Costs  
**File:** B-229438  
**Date:** August 10, 1988

### DIGEST

1. The Survivor Benefit Plan (SBP) is an income maintenance program for the surviving dependents of deceased service members. Military retirees who elect to participate in the SBP program are assessed costs to defray the expenses of annuity payments. The SBP law prohibits any refund of properly assessed costs, except in limited circumstances when an SBP participant is survived by a widow or widower whose SBP annuity is reduced or eliminated because of a concurrent entitlement to Dependency and Indemnity Compensation from the Veterans Administration. Hence, an Air Force sergeant who elected to provide SBP annuity coverage for his wife may not be allowed, based on the termination of their marriage by divorce, a refund of the costs he paid for that coverage over an 11-year period.

2. Survivor Benefit Plan (SBP) election are irrevocable, SBP participants who are determined by the Veterans Administration to have a total service-connected disability for 10 consecutive years may, however, suspend previously elected SBP annuity coverage for a spouse and stop paying the costs of coverage. The reason for this is that the laws governing veterans benefits give the surviving spouse of those SBP participants a vested entitlement to Dependency and Indemnity Compensation, so that the spouse's SBP entitlement is then either substantially reduced or totally eliminated. Until the 10-year period has elapsed, the spouse's ultimate entitlement to Dependency and Indemnity Compensation remains uncertain, so that SBP coverage during that 10-year period provides genuine and substantial income maintenance protection. Thus, an Air Force sergeant may not be allowed a refund of SBP costs he paid during such 10-year period on the basis of a theory that his payments "purchase[d] absolutely nothing."

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## DECISION

This decision is in response to correspondence received from Master Sergeant Joseph A. Macrina, USAF (Retired), requesting reconsideration of our Claims Group's denial of his claim for a refund of the amounts he paid for Survivor Benefit Plan (SBP) coverage from October 1, 1972, through June 30, 1983. We conclude that his claim was properly denied.

## BACKGROUND

Sergeant Macrina retired from the Air Force and subsequently elected, effective October 1, 1972, to provide SBP annuity coverage for his wife. He thus elected to receive military retired pay at a reduced rate after that date, to pay for the costs of the SBP coverage, in order to provide an annuity for his wife in the event she survived him.

In 1975 the Veterans Administration determined that a chronic illness incurred by Sergeant Macrina was service-connected, and it awarded him a disability rating of 100 percent retroactively effective to June 9, 1973. Sergeant Macrina then waived his military retired pay in order to receive disability compensation from the Veterans Administration.

After he waived his military retired pay, Sergeant Macrina continued to pay the costs of SBP annuity coverage for his wife through direct remittance to the Air Force Accounting and Finance Center. He was permitted to suspend SBP coverage for his wife on June 30, 1983, however, after he had been rated totally disabled by the Veterans Administration for 10 consecutive years. His payments for SBP coverage ended at that time.

Sergeant Macrina and his wife were divorced in November 1986. He then filed claim for a refund of the amounts (totalling \$3,899.83) which he had paid between October 1972 and June 1983 for her SBP annuity coverage. The Air Force Accounting and Finance Center and then the Claims Group of our Office denied his claim, and he has requested a further review of the matter.

Essentially, Sergeant Macrina states it is his understanding that if he had died before his divorce, his wife would have been entitled, as his widow, to Dependency and Indemnity Compensation from the Veterans Administration, and also to a refund from the Air Force of all of the SBP costs which he had paid between 1972 and 1983. When he divorced, however,

he chose not to provide SBP coverage for her as his former spouse, so that she is now ineligible for either an SBP annuity or a refund of the SBP costs. In these circumstances, he suggests, he should be allowed a refund of the SBP costs, since no SBP annuity will be payable on the basis of his participation in the program, and also since no one else is now in a position to claim a refund of the SBP costs.

In addition, Sergeant Macrina expresses the belief that the SBP program is of no use to a retiree who has a total service-connected disability rating from the Veterans Administration, since "no benefits would be forthcoming and the accumulation of payments . . . would purchase absolutely nothing, and would subsequently be returned to [the] widow." He says he continued making the cost payments after he received his total disability rating because he "felt it was the proper thing to do," but he questions the rationale of the requirement imposed that he continue to pay for annuity coverage for his wife until he had been rated totally disabled for a period of 10 years.

#### ANALYSIS AND CONCLUSION

The SBP program, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the surviving dependents of deceased service members. Congress established the program on September 21, 1972, with the enactment of Public Law 92-425, 86 Stat. 706.

A participant in the SBP program can elect to provide an annuity for a surviving widow or widower, and also, in the event of a divorce, for a surviving former spouse. See 10 U.S.C. § 1450(a). Elections are irrevocable. See Colonel Angus B. MacLean, 62 Comp. Gen. 553, 555-557 (1983). SBP participants must pay for the annuity coverage elected either through reductions in their military retired pay or through direct remittance of costs. See 10 U.S.C. § 1452(a) and (d). Any costs which remain unpaid at the time of the retiree's death may be set off against unpaid amounts due to the retiree or against the annuity benefits payable. See, e.g., Colonel Angus B. MacLean, USA (Retired), supra, 62 Comp. Gen. at 559-560.

A basic feature of the SBP program which was incorporated in the original legislation of 1972 is a requirement that the annuity of a surviving widow or widower be reduced in the amount of any entitlement to Dependency and Indemnity Compensation from the Veterans Administration. See 10 U.S.C. § 1450(c). A widow or widower whose SBP annuity is so reduced is entitled to a corresponding refund of the

SBP costs previously assessed. 10 U.S.C. § 1450(e). Except for situations in which an SBP annuity is reduced or eliminated because of the annuitant's concurrent entitlement to Dependency and Indemnity Compensation, refunds of properly assessed SBP costs are expressly prohibited. 10 U.S.C. § 1452(f).

A 1980 amendment to the SBP law added 10 U.S.C. § 1452(g), which permits retirees to discontinue SBP coverage for a spouse after they have been rated by the Veterans Administration as totally disabled for 10 consecutive years. Public Law 96-402, Oct. 9, 1980, 94 Stat. 1705. The Congressional reports relating to that amendment contain the following remarks which we find pertinent to the resolution of the issues presented by Sergeant Macrina's claim:

**"PARTICIPATION OF TOTALLY DISABLED RETIREES"**

"Under the Survivor Benefit Plan as presently constituted if, at the time the participating retiree dies, the Veterans Administration determines that the death was service-connected and that the surviving spouse is entitled to Dependency and Indemnity Compensation, the widow or widower is entitled to an annuity under the Survivor Benefit Plan only to the extent that the annuity is greater than the Dependency and Indemnity Compensation to which that spouse is also entitled. If the annuity under the Survivor Benefit Plan is equal to or less than the Dependency and Indemnity Compensation, no annuity is payable under the plan. If the annuity under that plan is greater than such Dependency and Indemnity Compensation, the spouse is entitled to a payment . . . equal to the amount by which that annuity exceeds that compensation. Under these conditions the surviving spouse receives a full refund of all of the deductions from the member's retired pay if no annuity is payable under the plan, or a proportional refund if some annuity is payable.

"Until 1978 no military retiree could be certain that his death would be determined to be service-connected and would result in the survivor being entitled to Dependency and Indemnity Compensation regardless of the severity or duration of any service-connected disability that he might possess. It was always possible that some nonservice-connected accident or other nonservice-connected condition might cause his death.

"In 1978 legislation was enacted providing that in any case in which a veteran at the time of his death had been rated totally disabled by the Veterans Administration for ten consecutive years, his surviving spouse would, if otherwise eligible, be entitled to Dependency and Indemnity Compensation regardless of the cause of his death. As a result of that legislation, and in view of the requirement in the Survivor Benefit Plan that any Dependency and Indemnity Compensation payable by the Veterans Administration be deducted from benefits payable to the spouse, a participant in the Survivor Benefit Plan rated totally disabled by the Veterans Administration for ten or more years is, in many cases, currently paying for a benefit his spouse either will never receive at all or will receive only in part.

"S. 91 would address this situation by providing that in any case in which a retired member is rated by the Veterans Administration as totally disabled from a service-connected cause for a continuous period of ten years or more . . . that member may request suspension of his participation in the Survivor Benefit Plan. On receipt of such a request, the deductions from that member's retired pay would be suspended and the spouse would become ineligible for a survivor annuity under the plan (except for a return of contributions upon the death of the member).  
(Emphasis added.)1/

. . . . .

"Refunds of any contribution to the Survivor Benefit Plan due to a survivor will continue to be made at the time of the retiree's death."  
(Emphasis added.)2/

In light of these explanatory remarks, it is apparent that Sergeant Macrina's wife had genuine and substantial SBP income maintenance protection from the time he elected to

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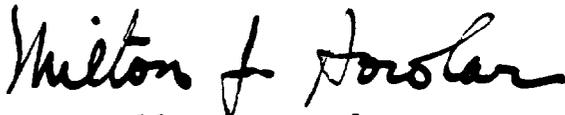
1/ H. R. Rep. No. 1315, 96th Cong., 2d Sess. 9-10, reprinted in part in 1980 U.S. Code Cong. & Ad. News 3721 (quoted excerpt not included).

2/ S. Rep. No. 748, 96th Cong., 2d Sess. 4 (1980).

participate in the SBP program in 1972 to the time in 1983 when he had been rated as totally disabled by the Veterans Administration for 10 consecutive years. While it is fortunate that his wife did not have the occasion to apply for an SBP annuity during those years, a refund of the costs may not be allowed on that basis. See Technical Sergeant James A. Lyles, USAF (Retired), B-224779, May 21, 1987. Similarly, his decision to decline SBP former spouse coverage for her at the time of their divorce cannot serve as a basis for a refund of those costs.

The plain wording of the SBP law prohibits any refund of properly assessed costs, except in limited circumstances when an SBP participant dies and is survived by a widow or widower who is entitled to Dependency and Indemnity Compensation. The legislative reports quoted above clearly demonstrate that this is precisely what the Congress intended.

Hence, we are unable to allow Sergeant Macrina's claim for a refund of the SBP costs he paid between October 1972 and June 1983.

*for*   
Comptroller General  
of the United States